Opinion
No. 1182

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY and L'ENFANT PLAZA PROPERTIES, INC.,

Petitioner

v. Docket No. 2460

DISTRICT OF COLUMBIA, SAMUEL C. REYNOLDS, JUDITH REYNOLDS and LONNIE SANDERS

Respondents

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY and L'ENFANT PLAZA PROPERTIES, INC.,

Petitioner

v. Docket No. 2461

DISTRICT OF COLUMBIA,

Respondent

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY and L'ENFANT PLAZA PROPERTIES, INC.,

Petitioner

v. Docket No. 2462

DISTRICT OF COLUMBIA,

Respondent

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY and L'ENFANT PLAZA PROPERTIES, INC.,

Petitioner

v. Docket No. 2517

DISTRICT OF COLUMBIA,

Respondent

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY and L'ENFANT PLAZA PROPERTIES, INC.,

Petitioner

v. Docket No. 2518

DISTRICT OF COLUMBIA,

Respondent

MEMORANDUM ORDER

These cases are all related in that each refers to the same real property and are appeals of assessments made on that property or are legal challenges to the method of making the assessments and the action of the Board of Equalization and Review in handling administrative appeals from the assessment.

I

It is important first to review the nature of and the issues raised in the pending cases and to also review the history of this litigation over the past several years.

The property involved is known as L'Enfant Plaza Properties and includes the L'Enfant Plaza Hotel and the other structures on that property, the property being legally described as Lot 61 in Square 435 and Lots 187 and 865 in Square 387.

The History of this Litigation.

The petitioners appealed from real property assessments made against the property for Fiscal Year 1975. That appeal

was considered in Docket 2290. During the trial of that case, the assessor who was called as the District's expert witness on the question of valuation, admitted that he had been less than candid and had been untruthful concerning statements relating to his qualifications as an expert. Although the Court did not find that he was disqualified to testify as an expert, the District nevertheless elected to withdraw him. The motion to withdraw the witness and to strike his testimony was granted and the case went forward only on the testimony of the petitioner's expert witness. The Court, hearing only the testimony of valuation given by the petitioner's expert, accepted that testimony and entered judgment for the petitioners. That case was appealed to the Court of Appeals but was thereafter voluntarily dismissed on motion by the District.[1/]

The respondent made a new assessment on the property for Fiscal Year 1976, increasing the valuation on the property over that found by the Court for Fiscal Year 1975, and the petitioners appealed from that assessment in Docket 2370. The property is Group A property as that term is defined in Kelly v. District of Columbia, 102 Wash. L. Rptr. 2081 (D.C. Super. Ct. 1974) (Kelly I) and as such was subject to reassessment only in Fiscal Years 1975 and 1977. The Court therefore granted the petitioners' motion for summary judgment

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1/ The petitioners only challenged the value assigned to the land.

and directed that the valuation be reduced to that already established for Fiscal Year 1975.[2/] Docket 2370 was appealed but the appeal was later dismissed by the District consistent with its acquiescence in the decision in Kelly v. District of Columbia, 105 Wash. L. Rptr. 577 (D.C. Super. Ct. 1977) (Kelly II).

A new assessment was made on the property for Fiscal Year 1977, which again increased the valuation on the property, and the petitioners appealed that assessment in Docket 2452. The petitioners thereafter filed a motion for summary judgment based upon the decision in District of Columbia v. Burlington Apartment House, Co., 375 A.2d 1052 (D.C. App. 1977) on the grounds that the undisputed facts in the case revealed that there had been no reassessment of the property for Fiscal Year 1977 and that the assessor had merely adopted the original assessment made for Fiscal Year 1976 which had later been reduced by the decision in Docket 2370. The motion for summary judgment was granted since the above facts were undisputed and the assessment was again reduced to the final valuation assigned

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2/ The District had argued in Kelly v. District of Columbia, that it was unable to make annual reassessments of real property due to a lack of resources and manpower. The Court in Kelly accepted that representation and required the District to reassess all properties once every two years, with Group A properties being reassessed in odd years and Group B being reassessed in even years, until such time as it had the resources to make annual reassessments. Congress imposed a similar requirement by D. C. Code 1973, §47-641(b)(Supp. V, 1978). Annual reassessments are now made beginning with Fiscal Year 1979.

for the prior fiscal years. District of Columbia Redevelopment Land Agency (L'Enfant Plaza) v. District of Columbia, 106 Wash. L. Rptr. 2257 (D.C. Super. Ct. 1978). That decision was never appealed and is now final.

II

The District then made what is purported to be a second half assessment pursuant to D. C. Code 1973, §47-711 for the second half of Fiscal Year 1977. The assessment for Fiscal Year 1978 would necessarily be the same as that for Fiscal Year 1977 as the result of the decision in Kelly v. District of Columbia, supra, unless it was decreased or increased as the result of an assessment being made during Fiscal Year 1977 pursuant to either D. C. Code 1973, §§47-710 or 47-711. An assessment made pursuant to Section 47-710 is made where, after the original assessment has been made which sets the valuation for the property for the coming fiscal year as of January 1, in this case the value for Fiscal Year 1977 as January 1, 1976, the property becomes taxable, or new structures are erected or roofed, or improvements or additions are made to old structures, or taxable property is damaged or destroyed, between the period January 1 but before July 1 of a given year. An assessment under Section 47-711 is similar to that under Section 47-710 except that it may be utilized only for changes occuring between July 1 but before January 1 of the following year. An assessment under Section 47-710 has the effect of changing the valuation for the entire fiscal year while that under Section 47-711 affects the valuation only for the second

half of the fiscal year.[3/]

III

Issues in the pending cases.

One of the issues presented here is the validity of the purported assessment made against the property for the second half of Fiscal Year 1977 pursuant to Section 47-711.

The petitioners contend that the assessment purportedly made pursuant to Section 47-711 is not a valid assessment because (1) the assessor failed to comply with the statute, (2) the property had been completed and under roof as early as calendar year 1973, (3) the assessment was made to circumvent the decisions in Kelly v. District of Columbia, supra, and (4) the assessment was made by the assessor as the result of the petitioners successful cross-examination of him in which they had brought out that he had been untruthful in his testimony concerning his qualifications in Docket 2290.

The challenges to the assessment purportedly made pursuant to Section 47-711 began when the petitioners filed Docket 2421, a suit to enjoin the assessment and collection of the increased taxes resulting from the assessment made under the above section. The record in that case revealed that the petitioners received

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3/ Counsel for the District have argued that an assessment pursuant to Section 47-711 would be retroactive so as to include the entire fiscal year, however, the language of the statute states that "the amounts [of the assessment made under section 47-711] shall be added as assessment for the second half" (Matter in brackets emphasis supplied). Thus, any change under a section 47-711 assessment is only for the second half of the fiscal year.

notice that the assessment was made under Section 47-710, but after the petition was filed in Docket 2421 a new notice was sent reflecting that the assessment was made pursuant to Section 47-711. The District conceded that any assessment under Section 47-710 in this case would have been improper and contended that the reference on the notice to Section 47-710 was a typographical error only, the proper reference being Section 47-711.

The evidence in the case also revealed that a member of the Department of Finance and Revenue did in fact file a formal complaint with a professional society against the expert witness who testified on behalf of the petitioners in Docket 2290, a fact which petitioners argue supports their claim that the present assessment under Section 47-711 was made as a result of a fact that their cross examination in Docket 2290 revealed that the District's assessor had been untruthful. The Court made no finding as to that allegation. Other evidence, however, supported petitioners' contention that the assessment under Section 47-711 was not valid. Notwithstanding the apparent defect in procedure, however, the Court dismissed Docket 2421 since it found that the petitioners had an adequate remedy at law and because injunctions against the assessment and collection of taxes is specifically prohibited by D. C. Code 1973, §47-2410. Docket 2421 is presently on appeal.

The petitioners thereafter filed the present actions. Docket 2460 is a case in which the petitioners seek to have the Court direct the Board of Equalization and Review (Board) to hear their appeal if an appeal to the Board is required where a taxpayer challenges the legality of an assessment as opposed to valuation. When the petitioners filed their appeal from the Section 47-711 assessment with the Board as the result of the dismissal of the request for injunctive relief in Docket 2421, they challenged only the legality of the assessment and not valuation. The Board ruled that it had no jurisdiction.[4/] This Court concludes that in a case where a taxpayer challenges only the legality of an assessment, an appeal to the Board of Equalization and Review is not a prerequisite to an appeal to this Court.

Petitioners also filed Docket 2461 in which they appealed from the assessment that was originally made under Section 47-710 but was later changed to reflect an assessment under Section 47-711. The District concedes that it could not have legally made an assessment under Section 47-710, this Court agrees, and based upon that concession that case shall be dismissed.

4/ The letter signed from the Chairman of the Board dated April 25, 1977, read: "The Board of Equalization and Review of the District of Columbia has taken no action on the above appeals. The Board has no jurisdiction to act on appeals for any purpose other than assessed valuation".

In Docket 2462 the petitioners appeal from the assessment made for the second half of Fiscal Year 1977 pursuant to Section 47-711.

Docket 2517 is a challenge of the legality of the regular assessment made for Fiscal Year 1978 which increased the valuation for that year over that determined to be the valuation for Fiscal Year 1977. The increase in valuation for Fiscal Year 1978 resulted from the increase in valuation caused by the assessment made pursuant to Section 47-711 for the second half of Fiscal Year 1977.

Finally, Docket 2518 is an appeal from the Fiscal Year 1978 assessment in which the petitioners only challenge the value assigned to the land. This Court has previously held, District of Columbia Redevelopment Land Agency v. District of Columbia, Docket 2370, (decided December 6, 1976); District of Columbia Redevelopment Land Agency v. District of Columbia, Docket 2290 (decided June 18, 1975), that a taxpayer may appeal the valuation assigned to land or improvements or both however, once such an appeal is taken the entire assessment is before the Court and may be litigated. The assessment is made up of two components, the value assigned to the land and the value assigned to improvements, and any appeal necessarily includes both components even though the taxpayer may only challenge the value assigned to one of the components.

IV

Dockets 2462 and 2518 are before the court on motions for summary judgment. Dockets 2460, 2461 and 2517 have no pending motions.

The motion in Docket 2462 is based upon petitioners contention that the assessment allegedly made pursuant to Section 47-711 for the second half of Fiscal Year 1977 is "void, illegal, invalid and unconstitutional".

Petitioners are entitled to summary judgment only if they satisfy the Court that there are no genuine issues of material fact and that they are otherwise entitled to judgment as a matter of law. See Super Ct. Tax R. 3, Civ. R. 12-I(k), 56. It is not the function of the Court to resolve any factual issues in its consideration of the motion and if there are material and relevant factual issues, the motion must be denied. The burden of demonstrating that there are no factual issues rest with the moving party. International Underwriters, Inc. v. Boyle, 365 A.2d 779, 782 (D.C. App. 1976). See also Super Ct. Civ. R. 56(c).

It is clear from the record that there was some confusion concerning the differences between a regular annual assessment and those under Sections 47-710 and 47-711 when the challenged assessment was made. No doubt, some of the confusion resulted from the failure to promulgate or disseminate guidelines for making such assessments for the benefit of the assessors and for the information of the public. This was evident

from the testimony of witnesses from the Department of Finance and Revenue who testified at the hearing in Docket 2421.[5/] A superior of the assessor in this case testified concerning the "gray area as to what we mean by 'erected'" (R-349).[6/] The assessor was under the impression that he could wait and impose the additional assessment under Section 47-711 until in his subjective judgment it was required. (R-266, 273-74.) Without guidelines it appears that each assessor was allowed to exercise his personal judgment on when to make assessments under Sections 47-710 and 47-711. It was a similar problem which was the subject of criticism in both the majority and dissenting opinions in Trustees of the Nineteenth Street Baptist Church v. District of Columbia, 378 A.2d 661, 664, n. 4 (D.C. App. 1977) (dissent by Judge Pair), rehearing denied 385 A.2d 8 (1978) (statement by Judge Pair).

Although it appears that the assessor and his supervisors may have been unfamiliar with the regulations, the City Council had in fact promulgated regulations in which they had defined the terms "erected" and "roofed and under roof". 22 DCR 1643-1660 (January 20, 1975). "Erected" is defined as "completely built and finished" and "roofed and under roof" is "the stage of completion of a structure where the main roof and roofs of any structures thereon are in place". 21 DCR 1644.

5/ That transcript was made a part of the record in Docket 2462 for the purpose of the motion.

6/ References are to the record in Docket 2421.

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6/ References are to the record in Docket 2421.

Section 47-711 provides that in addition to the annual assessment of real estate prior to July 1, "there shall be added a list of all new buildings erected or under roof prior to January 1 of each year, in the same manner as provided by law for all annual additions". The language of the statute is mandatory and does not depend upon the subjective judgment of each individual assessor. The assessor here waited until he felt the property's income was at a point were he could put on a "finished assessment" but his actions were inconsistent with the statute and the regulations. The assessment here should have been made when the structure was "erected" or "under roof".

The record in this case reveals that Certificates of Occupancy were issued for various stages of the structure in 1973. The District of Columbia Redevelopment Land Agency issued a Certificate of Completion on June 25, 1973. The hotel portion of the building was open for business on May 31, 1973. While there may be some argument as to whether the building was "erected" or "under roof" on a particular day in May or June 1973, there is no question that the structures were erected and under roof well before July 1, 1976, and for that matter, January 1, 1976. Thus, neither an assessment under Section 47-710 nor Section 47-711 for Fiscal Year 1977 would have been valid. The material and relevant facts concerning the pertinent periods in this case, that period being 1976, are not in doubt. The only permit

activity recorded for the period July 1976 to January 1977 was the remodeling of a Pizza Parlor in the building and the assessor's suggestion that that "activity" at a cost of approximately $600 triggered a valuation rise of over $11,000,000 requires no response or comment by the Court.

This Court rules then that an assessment under Section 47-711 can only be made and must then be made when the property is "erected" or "roofed and under roof" as those terms are defined by the regulations. Absent further regulations being promulgated by the City Council, the Court holds that the condition of "erected" or "roofed and under roof" is satisfied when the Certificate of Occupancy for the entire structure is issued. In this case that was in 1973.

The Court holds then as a matter of law that the assessment purportedly made in this case pursuant to Section 47-711 was void and invalid and that the valuation assigned to the property for the entire fiscal year must be the same as that assigned for the annual fiscal year in 1977; the same value found by the Court in Docket 2452.

V

While the ruling in Docket 2462 is dispositive, the Court shall briefly address the motion filed in Docket 2518 which is dispositive for other reasons.

Docket 2518 is an appeal from the regular annual assessment made for Fiscal Year 1978. Petitioners' motion for summary judgment in Docket 2518 is based upon the Court's

decision in Kelly v. District of Columbia, supra, that is that Group A property, which this is, may only be reassessed for Fiscal Years 1975 and 1977. Petitioners argue that the assessment for Fiscal Year 1978 must be the same as that for Fiscal Year 1977; the amount of that assessment being that determined by this Court in its decision in Docket 2452. That is true unless there has been an intervening value assigned to the property as the result of valid assessments under Section 47-710 or 47-711. This Court has already determined that the intervening assessment under Section 47-711 was invalid, Part IV supra, accordingly, petitioners are now entitled to summary judgment in Docket 2518, as a matter of law.

VI

Petitioners are also entitled to summary judgment in Dockets 2462 and 2518 in view of the unappealed decision in Docket 2452.

The judgment entered for petitioners in Docket 2452 was directed to the entire Fiscal Year 1977 which necessarily includes the second half which the District had elsewhere contended was the subject of an assessment under Section 47-711. That assessment was at issue in Docket 2462. This Court has recently accepted the District's argument in Cathedral Associates, Limited Partnership v. District of Columbia, Docket 2424 (decided April 27, 1979) that an assessment under Section 47-710 requires the assessor to set a new valuation on the property rather than merely adding the cost of the improvements and/or additions to the annual assessment.

The assessor under Section 47-711 must also determine a new valuation for the property rather than merely adding the cost of any improvements or additions which result in the property being "erected" or "under roof". Thus the assessment under Section 47-711, like the assessment under Section 47-710, is an assessment on the property as a whole.

The decision in Docket 2452 determined the valuation of the property for the second half as well as the first half of Fiscal Year 1977. Interestingly enough, the assessor in filing his affidavit in opposition to the motion for summary judgment in Docket 2452, never made reference to the purported second half assessment under Section 47-711. Rather, he stated that he relied upon his findings in prior years and said that "[h]aving reviewed the available data, I concluded that there is no basis to change my previous estimate of value recorded for prior years and I have assigned that value for tax year 1977" (emphasis supplied). Judgment was entered and that judgment is controlling in Dockets 2462 and 2518. That judgment is now final having never been appealed. That judgment is res judicata and any attempt to attack that judgment in Dockets 2462 and 2518 constitutes a collateral attack upon the judgment which is prohibited. See Higginson v. Schoenman, 89 U.S. App. D.C. 126, 190 F.2d 32 (1951). Accord: Franklin v. District of Columbia, 248 A.2d 677 (D.C. App. 1968): Abbott v. District of Columbia, 154 A.2d 362 (D.C. Mun. App. 1959).

VII

The District has argued that regardless of the Court's holding in Kelly v. District of Columbia, supra, that once a petitioner takes an appeal for a fiscal year for which an assessment could not have been made, the Court can then increase the value assigned to the property notwithstanding the decision in Kelly. That argument is expressly rejected by this Court in those cases where, as here, it is obvious that the appeal was taken by the petitioners only as a precautionary measure in the event the Court did not find that the assessment purportedly made under Section 47-711 was void and invalid. To allow respondents to persist in that argument would be to allow it to do indirectly what the Court has held is could not do directly and which the respondent itself has agreed it would not do. See Kelly II.

O R D E R

In view of the above, it is hereby

ORDERED that Docket 2460 is dismissed with prejudice, and it is further

ORDERED that Docket 2461 is dismissed with prejudice, the Court holding and the District conceding that there was no valid reassessment under Section 47-710, and it is further

ORDERED that Docket 2517 is dismissed with prejudice, that case being a challenge to the legality of the assessment made for Fiscal Year 1978, and it is further

ORDERED that the petitioners' motion for summary judgment in Dockets 2462 and 2518 are granted, the Court will sign the proposed Orders submitted by the petitioners with some modification, and it is further

ORDERED that the motion for default judgment in Docket 2518 is denied.

Dec. 27, 1979

JOHN GARRETT PENN
Judge

Gilbert Hahn, Esquire
Counsel for Petitioners

Melvin Washington, Esquire
Counsel for Respondent

Copies mailed postage prepaid to parties above on 12-27, 1979.